by the actual intent of the parties, subject to the provisions of the Statute of Frauds. *Pusey* v. *Presbyterian Hospital*, 70 Neb. 353, 97 N. W. 475; *White* v. *Sohn*, 63 W. Va. 80, 59 S. E. 890; *cf. Bradley* v. *Slater*, 50 Neb. 682, 70 N. W. 258. It is submitted that even when the holding over is unlawful, the actual intent of the tenant, as evidenced by circumstances, should operate to negative any option in the landlord. Extreme cases have sometimes led to the practical recognition of this. *Herter* v. *Mullen*, 159 N. Y. 28, 53 N. E. 700. In the principal case, moreover, the lessor accepted rent from the defendant with knowledge that the latter, as receiver, would have no desire to prolong the tenancy beyond the indefinite period necessary for the winding up of the business. From these acts it is clearly possible to infer a new agreement. *Withnell* v. *Petzold*, 17 Mo. App. 669; *Abeel* v. *McDonnell*, 39 Tex. Civ. App. 453, 87 S. W. 1066. Therefore, whether the holding over be regarded as lawful or unlawful, the decision in the principal case seems correct.

LIBEL AND SLANDER — PRIVILEGED COMMUNICATIONS — PETITIONS FOR PARDON.— A petition to the governor for a pardon contained the words, "The judge changed the venue of the case for the purpose of making the costs excessive." *Held*, that the publication is absolutely privileged. *Connellee* v. *Blanton*, 163 S. W. 404 (Tex. Civ. App.).

For discussion of the question raised see NOTES, p. 745.

LIENS — GARAGE-KEEPER'S RIGHT TO LIEN FOR MAINTENANCE OF MOTOR-CAR. — The keeper of a garage agreed with the owner of a motor-car to keep it in his garage, furnish a chauffeur, and maintain it in repair. The car was at the owner's disposal. *Held*, that the keeper of the garage has no lien for his charges. *Hatton* v. *The Car Maintenance Co.*, 30 T. L. R. 275 (Chan.).

A common-law lien will attach to a chattel only when it has been improved by the labor and skill of the bailee. *Chapman* v. *Allen*, Cro. Car. 271. No lien then attaches in the principal case for the storage or for the services of the chauffeur. And since the incidental repairing was simply to maintain the chattel at the same standard, no lien attaches for that. *Miller* v. *Marston*, 35 Me. 153. However, by statute in America generally, a livery stableman is given a lien for the keep of animals. See 1 JONES, LIENS, § 646 *et seq.* It is submitted that the position of the garage owner is analogous, and affords a proper subject for legislation. See CONSOL. LAWS N. Y., LIEN LAW, § 184. The provision that the owner might take possession at any time is generally considered inconsistent with the existence of a lien at common law. *Forth* v. *Simpson*, 13 Q. B. 680; *Smith* v. *O'Brien*, 46 N. Y. Misc. 325, 94 N. Y. Supp. 673. But since this right is usually granted in contracts with livery stablemen or garage keepers, such a rule would practically nullify statutes giving them a lien. Accordingly, the statutory lien should exist in spite of this right. *Young* v. *Kimball*, 23 Pa. 193; *Heaps* v. *Jones*, 23 Mo. App. 617. The lien holder's rights, however, could not be set up to defeat the rights of third parties accruing while the owner was in actual possession. *Thourot* v. *Delahaye Import Co.*, 69 N. Y. Misc. 351, 125 N. Y. Supp. 827; *Vinal* v. *Spofford*, 139 Mass. 126.

MASTER AND SERVANT — EMPLOYERS' LIABILITY ACTS — EFFECT OF ECONOMIC PRESSURE ON VOLUNTARY ASSUMPTION OF RISK. — An employee complained of the defective condition of a certain appliance, and was told to use it or quit. He continued to work, and was injured. In an action under the Federal Employers' Liability Act, *held*, that whether the assumption of risk was voluntary was a question of fact for the jury. *New York, N. H., & H. Ry. Co.* v. *Vizvari*, 210 Fed. 118 (Civ. Ct. App., 2nd Circ.).

The overwhelming weight of American authority holds that a servant who

continues his employment with knowledge of unusual dangers caused by the employer's negligence, without receiving a promise to remove them, has as a matter of law, voluntarily assumed the risk. *Lamson* v. *American Axe & Tool Co.*, 177 Mass. 144, 58 N. E. 585; *St. Louis Cordage Co.* v. *Miller*, 126 Fed. 495; but see 27 HARV. L. REV. 284. In England, however, whether or not the assumption was voluntary is a question of fact for the jury. *Smith* v. *Baker*, [1891] A. C. 325. And the jury may take into account the economic pressure on the servant caused by fear of losing his position. *Yarmouth* v. *France*, 19 Q. B. D. 647. See *Walsh* v. *Whiteley*, 21 Q. B. D. 371, 374. In adopting both phases of the English view, the principal case marks a material departure from previous federal decisions. *McPeck* v. *Central Vt. Ry. Co.*, 79 Fed. 590. Under Section 4 of the Federal Employers' Liability Act, if the employer's negligence consists in the breach of a statutory duty, the defense of assumption of risk is expressly excluded. U. S. COMP. STAT. SUPP. 1911, p. 1323. But where, as in the principal case, the negligence violates no statute, there has been some conflict as to whether or not the defense is still available. A recent United States Supreme Court decision, however, settled the dispute in favor of allowing the defense. *Seaboard Air Line Ry.* v. *Horton*, U. S. Sup. Ct. No. 691, April 27. See cases collected in 47 L. R. A. N. S. 38, 62. The decision in the principal case, however, will certainly reduce its application to a minimum, for as a practical matter the employee's assumption of risk will seldom be found truly voluntary.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — INJURY OCCURRING "IN THE COURSE OF" AND ARISING "OUT OF" EMPLOYMENT. — The deceased was engaged as a seaman under articles in which the Board of Trade compulsory scale of diet was struck out, and a provision that the crew should provide their own provisions substituted. The deceased went ashore for provisions and was drowned while returning. *Held*, that the accident did not arise out of the employment since there was no contractual obligation that deceased should provide his food. *Parker* v. *Owners of Ship Black Rock*, 136 L. T. J. 375 (Ct. App., Feb., 1914).

The deceased was employed as drayman continuously from eight A.M. till eight P.M., with no interval for meals. He left his team to get a glass of beer, and was killed by a motor car while returning. *Held*, that the accident arose out of the employment, since thus leaving the team was a reasonable incident thereof. *Martin* v. *Lovbond & Co.*, 136 L. T. J. 402 (Ct. App., Feb., 1914).

The English cases have generally held an accident to arise "out of" the employment when it results from a risk incidental to the employment as distinguished from a risk common to all mankind. See 27 HARV. L. REV. 390. A sailor who must depend upon his own efforts to secure food seems, because of his employment, peculiarly subject to the risks attendant on going ashore. More doubtful is the unique character of the risk incurred by the drayman of injury from passing motor cars. It is, however, a risk incidental to his employment, and the more likely to happen by reason of the same; and allowing recovery seems fully in accord with the spirit of the legislation. For discussion of this question see article by Professor Bohlen in 25 HARV. L. REV. 328–348, 401–427, 517–547.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — WHETHER OCCUPATIONAL DISEASE IS A "PERSONAL INJURY." — As the result of continuous exposure to furnace gases in the course of his employment, the plaintiff contracted a disease which destroyed his eyesight. The Workmen's Compensation Act provided for compensation for "personal injury arising out of and in the course of the employment." *Held*, that the plaintiff is entitled to compensation. *In re Hurle*, 104 N. E. 336 (Mass.).